

OCT 29 1998

Commission on
Judicial PerformanceSTATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

Inquiry Concerning Judge Pamela R. Rogers

No. 144

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This is a disciplinary matter concerning Judge Pamela R. Rogers of the Los Angeles County Municipal Court. Formal proceedings having been instituted, this matter is now before the Commission on Judicial Performance pursuant to Rule 127 of the Rules of the Commission on Judicial Performance (discipline by consent).

APPEARANCES

Trial counsel for the Commission on Judicial Performance is Jack Coyle. Counsel for Judge Rogers is Ephraim Margolin.

PROCEDURAL HISTORY

Formal proceedings were instituted in this matter by a Notice of Formal Proceedings dated January 7, 1998. The Notice sets forth three counts of misconduct pursuant to article VI, section 18 of the California Constitution. Respondent filed a verified answer. As provided for by Rule 121(b) of the Rules of the Commission on Judicial Performance, the Supreme Court appointed three special masters to conduct an evidentiary hearing and to prepare a written report.¹

CONSENT AGREEMENT

After a prehearing status meeting, but prior to the commencement of the hearing, the parties advised the commission that Judge Rogers had agreed to disposition on the following terms:

Regarding Count One and Count Two of the Notice of Formal Proceedings, respondent and examiner stipulate to the following:

1. The charges in Count One and Count Two will be dismissed upon the following conditions: Every other month through July 1, 2000, beginning on the month following approval of

¹ The special masters are Justice Marcel Poché of the Court of Appeal, First Appellate District (presiding), Justice Arthur G. Scotland of the Court of Appeal, Third Appellate District, and Justice Rebecca Wiseman of the Court of Appeal, Fifth Appellate District.

this stipulation by the commission, respondent shall provide to the commission: (1) medical reports regarding her medical condition and treatment, indicating all medications prescribed, which reports shall be sent directly to the commission by respondent's doctors; (2) an affidavit executed by respondent stating that the medical reports submitted reflect all of the doctors she has consulted and all of the medications prescribed for her in the period covered by the reports; and (3) respondent's judicial attendance records.

2. Failure to comply with the conditions set forth in this stipulation will result in reinstatement of the conditionally dismissed charges.
3. Commission staff may monitor respondent by court observation. If, during the monitoring period, respondent appears impaired in the performance of her judicial duties by her use of medications, the conditionally dismissed charges may be reinstated, and new charges may be filed.
4. Upon compliance with these conditions, the charges in Counts One and Two will be dismissed with prejudice on July 1, 2000.

The parties submit that the proposed conditional dismissal and monitoring of respondent's medical condition and judicial performance is an appropriate disposition of the charges concerning respondent's use of medications.

The allegations before the commission do not concern the use of illicit drugs. All drugs taken by respondent were medications prescribed for her by doctors for serious medical conditions, principally migraine headaches. Respondent acknowledges that she has used medications prescribed by her doctors which, prior to April 1997, included narcotics. There is a risk of dependency in using some of these medications, even upon prescription. Such dependency could be inconsistent with the responsibility of a judge.

Respondent, however, has sought and received expert medical assistance in order to manage her condition without narcotics. As a result, at least since April 1997, all medications prescribed for and used by respondent have been non-narcotic, and her medical condition now appears to be under control with the help of exclusively non-narcotic medication. See declaration of Dr. Arulanantham, para. 22, Exhibit A to Answer to Notice of Formal Proceedings.

The examiner consulted with medical expert Dr. Richard Sandor. After review of the medical records, it was Dr. Sandor's opinion that the medications respondent is currently taking are not incompatible with performing as a judge.

There has been no reported occasion of respondent appearing to be under the influence of medication at work since April 1997. It appears that respondent has remedied the underlying medical problem that gave rise to the present allegations involving her use of medication.

Respondent acknowledges that if the commission accepts this stipulated disposition, the conditions to the dismissal will be made public as will the commission's reasons for accepting this disposition. The contents of the reports submitted to the commission by respondent, however, will not be made public, provided respondent complies with the stipulated conditions.

Regarding Count Three of the Notice of Formal Proceedings, respondent and examiner stipulate to the following:

Respondent shall be publicly admonished for failing to rule on several matters within 90 days, as required by law.

In seven cases, matters were submitted to respondent for decision and remained undecided in excess of 90 days.

In *Fox v. Palmdale*, case no. MS1342, a superior court law and motion matter was submitted to respondent for decision on or about January 17, 1997, and remained undecided until late May 1997;

In *Antelope Valley Newspapers, Inc. dba Antelope Valley Press v. Desert Mailer News*, case no. NOC10714, a superior court law and motion matter was submitted to respondent for decision on or about January 17, 1997, and remained undecided by respondent until she recused herself in late May 1997;

In *Bakken v. Berry*, case no. MC7928, a superior court law and motion matter was submitted to respondent for decision on or about January 31, 1997, and remained undecided until late May 1997;

In *Miller v. Sitarek*, case no. 95C00982, a municipal court trial was submitted to respondent on or about October 29, 1996, and remained undecided until approximately February 24, 1997;

Gangwish v. Ryan, case no. 93C02158, a municipal court trial, was submitted to respondent on or about December 4, 1996, and remained undecided until approximately April 29, 1997;

Chemical Bank v. Winkelstein, case no. 96C00126, a municipal court trial, was submitted to respondent on or about November 1, 1996, and remained undecided until approximately February 20, 1997;

In *Johnson v. McMahan*, case no. MS 001725, a superior court law and motion matter was submitted to respondent in or about early February 1997, and remained undecided until approximately late May 1997.

California Constitution, article VI, section 19, provides that a judge may not receive a judicial salary if any cause remains pending and undetermined for 90 days after submission. Government Code section 68210 provides that a judge may not receive a judicial salary without executing an affidavit stating that no cause remains pending and undetermined for 90 days after submission. In *Mardikian v. Commission on Judicial Performance* (1985) 40 Cal.3d 473, 477, fn. 4, the Supreme Court held that it was "the judgment of the Legislature and the electorate that this [90 day] period affords a reasonable time within which to expect a trial judge to carry out the basic responsibility of a judge to decide cases."

The Code of Judicial Ethics, canon 3B(8), requires a judge to dispose of matters promptly and efficiently. While the seven matters listed above remained pending and undetermined for 90 days after submission for decision, respondent received a judicial salary. She did not, however, execute false affidavits stating that she had no cases pending for 90 days. Neither did respondent execute any salary affidavit, as required by Government Code section 68210, before receiving her judicial salary. However, during the time in question, court administration was not having any of the municipal court judges execute salary affidavits. Additionally, during the period these cases were pending, respondent was voluntarily handling a superior court law and motion calendar, in addition to a full time municipal court calendar.

Regarding Count Three, respondent and examiner agree that based upon the foregoing, respondent shall be publicly admonished for inordinate delay in deciding seven submitted matters within 90 days constituting improper action.

The foregoing stipulation is signed by Judge Rogers and her counsel, and by Trial Counsel. It is accompanied by an affidavit by Judge Rogers stating that she freely and voluntarily consents to the sanction of public admonishment, admitting to the charges as alleged in Count Three of the Notice of Formal Proceedings, and waiving review by the Supreme Court.

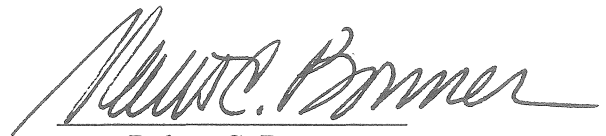
DISCIPLINE

The commission adopts the foregoing stipulation and concurs that, in the circumstances of this case, disposition by suspending Counts One and Two, pending their dismissal with prejudice

upon Judge Rogers successful completion of the monitoring period and issuing a public admonishment on Count Three is appropriate. The Supreme Court has noted that the purposes of a commission disciplinary proceeding are "the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system." *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1111-1112, quoting *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 912. The commission finds that these purposes are well served by the stipulation, particularly its provisions for monitoring. The commission's vote was 10 to 0. There is one vacancy.

This decision and order shall constitute the order of public admonishment.

Dated: October 29, 1998

A handwritten signature in dark ink, appearing to read "Robert C. Bonner", written over a horizontal line.

Robert C. Bonner
Chairperson

Commission members Robert C. Bonner, Esq., Ms. Ophelia Basgal, Mr. Mike Farrell, Hon. Lois Haight, Hon. Daniel M. Hanlon, Patrick M. Kelly, Esq., Mr. Luke Leung, Ms. Ramona Ripston, Ms. Harriet Salarno, and Donald E. Vinson, Ph.D., voted for the public admonishment. There was one vacant position on the Commission.